

BOARD OF APPEALS CASE NO. 5213

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BEFORE THE

APPLICANTS: Jeffrey & Rebecca Streett

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ZONING HEARING EXAMINER

**REQUEST: Variance to construct an
attached garage within the required side
yard setback; 2300 Mills Road, Fallston**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 1/23/02 & 1/30/02

HEARING DATE: March 4, 2002

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Record: 1/25/02 & 2/1/02

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Jeffrey and Rebecca Streett, are requesting a variance, pursuant to Section 267-36B, Table V, of the Harford County Code, to allow an attached garage within the required 10 foot side yard setback in an R2 District.

The subject parcel is located at 2300 Mills Road, Fallston, Maryland 21047 in the Third Election District, and is more particularly identified on Tax Map 55, Grid 2C, Parcel 779, Lot 14, in the Mills Subdivision. The parcel contains approximately 0.633 acres.

The Applicant, Jeffrey Barton Streett, appeared and testified that he and the Co-Applicant, Rebecca Streett, are the owners of the subject property. He stated that he had read the Department of Planning and Zoning Staff Report, and had no changes or corrections to the information contained therein.

Mr. Streett described his property as a corner lot located at the intersection of Mills Road and Milton Avenue. The lot is improved by a brick rancher with an attached rear deck, a blacktopped drive, and a storage shed located to the rear of the dwelling on the left side of the property. The home is constructed in an area with a high water table, so the house has no basement, and hence very little room for storage.

The Applicant stated that he and the Co-Applicant propose to construct a 28 foot by 60 foot attached garage on the left side of the house, with a 12 foot by 16 foot storage shed attached to the rear of the garage. According to the witness, the proposed site is the only practical location on the property where an attached garage can be built, as the potential construction area is limited by the existence of mature trees and shrubbery, and the existing rear septic system and septic reserve area.

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The rear side wall of the proposed garage would encroach into the side yard setback. At its closest point, the garage would be 5 feet from the property line. The garage would still be 43 feet from the closest dwelling, and 55 feet from the front property line.

The witness did not introduce a blueprint or drawing of the proposed garage, however he testified that it will be compatible with other property in the neighborhood. He also testified that the garage will be similar to other attached garages, and carports, located within in the Mills Subdivision. Mr. Streett does not believe that the proposed garage will have any adverse impact on neighboring properties. He has spoken to the owners of the adjoining property, closest to the proposed garage, who indicated that they have no objection to the construction of the garage within the side yard setback.

The Department of Planning and Zoning recommended approval of the subject request in its Staff Report, which was filed on February 25, 2002, stating that:

“The property is a corner lot and subject to two front yard setbacks. There is a limited area to construct a garage due to the mature trees and shrubbery. The rear yard contains the existing septic system and reserve area. There will still be approximately 43 feet to the dwelling on the adjoining lot. The request should not adversely impact the intent of the Code or the adjacent properties.”

No witnesses appeared in opposition to the requested variance.

CONCLUSION:

The Applicants, Jeffrey and Rebecca Streett, are requesting a variance, pursuant to Section 267-36B, Table V, of the Harford County Code, to allow an attached garage within the required 10 foot side yard setback in an R2 District. The proposed addition would reduce the side yard setback to 12 feet at the front of the garage, and 5 feet at the rear of the garage. Harford County Code Section 267-36B, Table V: Design Requirements for Specific Uses in an R2 Urban Residential District, provides for a minimum 10 foot front yard depth.

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Section 267-11 of the Harford County Code permits the granting of variances, stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Maryland Court of Special Appeals set forth a two-prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if a peculiar characteristic or unusual circumstance, relating only to that property, causes the zoning ordinance to impact more severely on the property than on surrounding parcels. Cromwell, supra, at 721. If the subject property is found to be unique, the hearing examiner may proceed to the second prong of the test. This involves a determination as to whether literal enforcement of the zoning ordinance, with regard to the unique property, would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The parcel is a corner lot, and hence subject to two front yard setbacks. Potential locations for the proposed garage are limited by the existence of mature trees and shrubs on the property, and the placement of the septic system and septic reserve area to the rear of the dwelling. Thus, the first prong of the Cromwell test has been met.

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Having found that the subject property is unique, it must next be determined whether denial of the requested variance would create unreasonable hardship or practical difficulty for the Applicants. The Hearing Examiner finds that literal enforcement of the Code would result in practical difficulty in this case because the proposed location is the only practical place on the property where an attached garage can be constructed. If the requested variance is not granted, the Applicants will be unable to construct an attached garage on their property, and will therefore be denied property rights commonly enjoyed by other homeowners in Mills Subdivision. In addition storage space within the existing dwelling is limited by the fact that it has no basement, as a result of being constructed in an area with a high water table.

Finally, the Hearing Examiner finds that the granting of the requested variance will not be substantially detrimental to adjacent properties, or materially impair the purpose of the Code or the public interest. Many other houses in the Mills Subdivision have attached garages, or carports. In addition, the owners of the adjacent property, whose setback would be encroached upon have stated that they have no objection to the granting of the proposed variance.

The Hearing Examiner recommends approval of the Applicant's request, subject to the following conditions:

1. That the Applicant obtain all necessary permits and inspections for the proposed construction.
2. That the Applicant not encroach further into the setback than the distance requested herein.

Date: APRIL 16, 2002

Rebecca A. Bryant
Zoning Hearing Examiner